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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,578	10/06/2003	Stefano Scialla	9379	3119

27752 7590 12/09/2005

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EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/679,578	Applicant(s) SCIALLA ET AL.	
	Examiner Brian P. Mruk	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2005.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3-24-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. The examiner makes of record that the instant application is not a proper continuation-in-part of Serial No. 09/980,328, since the two applications do not have any common inventors. See *MPEP 201.08*. Therefore, the examiner asserts that the effective filing date of the instant application is October 6, 2003.

Claim Objections

2. Claim 14 is objected to because of the following informalities: In instant claim 14, the terms "NOBS", "DOBS" and "LOBS" should be written out for clarification purposes. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by De Buzzaccarini et al, WO 01/00765.

De Buzzaccarini et al, WO 01/00765, discloses an aqueous laundry product comprising an effervescent agent-containing component and an acid-containing component and/or source of peroxide component that are physically separated from each other (see abstract and page 3, lines 10-33). It is further taught by De Buzzaccarini et al that the effervescent agent-containing component has a pH between 7-11, and includes a base, surfactants, and enzymes (see page 4, line 30-page 5, line 25), and that the acid-containing component and/or source of peroxide component has a pH between 0-6, and includes organic acids, such as maleic acid and succinic acid, hydrogen peroxide, polycarboxylic acids, and adjunct ingredients (see page 5, line 26-page 6, line 35), per the requirements of the instant invention. Specifically, note Examples 17-20. Therefore, instant claims 1-20 are anticipated by De Buzzaccarini et al, WO 01/00765.

5. Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by De Buzzaccarini et al, U.S. Patent No. 6,699,828.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

De Buzzaccarini et al, U.S. Patent No. 6,699,828, discloses an aqueous laundry product comprising an effervescent agent-containing component and an acid-containing component and/or source of peroxide component that are physically separated from each other (see abstract and col. 2, lines 20-40). It is further taught by De Buzzaccarini et al that the effervescent agent-containing component has a pH between 7-11, and includes a base, surfactants, and enzymes (see col. 4, lines 6-53), and that the acid-containing component and/or source of peroxide component has a pH between 0-6, and includes organic acids, such as maleic acid and succinic acid, hydrogen peroxide, polycarboxylic acids, and adjunct ingredients (see col. 4, line 54-col. 5, line 55), per the requirements of the instant invention. Specifically, note Examples 17-20. Therefore, instant claims 1-20 are anticipated by De Buzzaccarini et al, U.S. Patent No. 6,699,828.

Double Patenting

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6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,699,828.

Although the conflicting claims are not identical, they are not patentably distinct from each other because De Buzzaccarini et al, U.S. Patent No. 6,699,828, claims a similar dual compartment laundry product comprising a first compartment that contains an effervescent agent-containing component that has a pH between 7-11, and includes a base, surfactants, and enzymes, and a second compartment that contains an acid-containing component and/or source of peroxide component that has a pH between 0-6, and includes organic acids, such as maleic acid and succinic acid, hydrogen peroxide, polycarboxylic acids, and adjunct ingredients (see claims 1-21 of De Buzzaccarini et al,

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U.S. Patent No. 6,699,828), per the requirements of the instant claims. Therefore, instant claims 1-20 are an obvious formulation in view of claims 1-21 of De Buzzaccarini et al, U.S. Patent No. 6,699,828.

8. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22 of copending Application No. 10/679,579. Although the conflicting claims are not identical, they are not patentably distinct from each other because copending Application No. 10/679,579 claims a similar dual compartment laundry product comprising a first part comprising a liquid cleaning composition that has a pH between 4-10, and includes a hydrophobic bleach activator and adjunct ingredients, and a second part comprising a bleaching composition that includes hydrogen peroxide and a peroxyacid (see claims 1-22 of copending Application No. 10/679,579), per the requirements of the instant invention. Therefore, instant claims 1-20 are an obvious formulation in view of claims 1-22 of copending Application No. 10/679,579.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00AM-5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BPM

Brian Mruk
December 6, 2005

Brian P. Mruk

Brian P Mruk
Primary Examiner
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